

REMARKS

Upon entry of the foregoing amendments, claims 1-35 have been cancelled without prejudice or disclaimer to the subject matter contained therein. New claims 36-42 have been added to clarify the subject matter of the previously pending claims. The new claims do not introduce new matter within the meaning of 35 U.S.C. §132. Accordingly, entry of the amendment is respectfully requested.

In view of the following, further and favorable consideration is respectfully requested.

1. Claim Rejection - 35 USC §112

Claims 18, 27, 28, 30 and 32-34 are rejected under 35 USC §112, first paragraph as failing to comply with the written description requirement.

New claim 36 recites that the silver layer is made of “pure elemental silver”, and therefore presents no issue with respect to the written description requirement.

Accordingly, Applicants submit that the new claims meet the written description requirement under 35 USC §112, first paragraph.

2. Claim Rejection - 35 U.S.C. §103(a)

Trogolo in view of Bates

In the Official Action, the rejection of claims 18, 27, and 32-34 under 35 U.S.C. 103(a) based on Trogolo et al. (U.S. Patent No. 6,296,863) in view of Bates et al. (U.S. Patent No. 6,530,951) has been maintained.

Applicant respectfully traverses this rejection.

Previously submitted, a *prima facie* case of obviousness has not been successfully established against the rejected claims. The requirements for a *prima facie* case are not repeated herein from the previous response, but are incorporated by reference from the response filed on April 23, 2008 in their entirety.

The instant subject matter is directed to:

An antibacterial vascular prosthesis, comprising: a porous textile material comprising:

- a coating comprising an absorbable material and silver ions;
- a substantially closed silver layer comprising pure elemental silver having a thickness of 2500 to 1000 Å and leaving the pores open;
- a substantially non-absorbable or only slowly absorbable polymer material comprising silver atoms of the silver layer impressed into the polymer surface and further coating and sealing the pores.

As such, Applicant submits that the combination of Trogolo et al. and Bates et al. fail to teach or suggest all the elements of the presently claimed antibacterial vascular prosthesis, and thereby fail to render the presently claimed antibacterial vascular prosthesis obvious.

Applicant's antibacterial vascular prosthesis comprises, in part, silver ions, which are deposited on in the absorbable layer via corrosion of the closed silver layer by constituents of the absorbable layer. This corrosive interaction leads to a release of silver ions which deposit in the absorbable layer of the instant antibacterial vascular prosthesis. While the absorbable layer breaks down, the silver ions deposited in the layer release more rapidly. As a result, the instant antibacterial vascular prosthesis has an increased release rate of silver ions into the surrounding area of the antibacterial vascular prosthesis. As previously submitted, the increased release rate of the silver ions during the initial healing phase, i.e., the time after implant, serves to minimize the risk of the occurrence of post surgical infections that can require surgical re-intervention.

Those of skill in the art were not aware of the aforementioned feature of the instant antibacterial vascular prosthesis, since the documents of Trogolo et al. and Bates et al. are completely silent with respect to silver release behavior. Therefore, those of skill in the art would have no impetus to combine Trogolo et al. and Bates et al., which therefore do not teach each of the elements as instantly claimed.

Accordingly, the combination of Trogolo et al. and Bates et al. do not render in the instantly claim subject matter obvious.

In the Official Action, claims 28 and 30 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Trogolo et al. (above) in view of Bates et al. (above) in further view of Shikani et al. (U.S. Patent No. 5,762,638).

Applicant respectfully traverses this rejection. The instant subject matter, as well as Trogolo et al. and Bates et al., are discussed above. Shikani et al. has been discussed in the previous response.

Shikani et al. do not remedy the deficiencies of Trogolo et al. and Bates et al., which are discussed above.

As previously, Shikani et al. disclose invasive medical devices, wherein a polymer has been coated or incorporated with anti-infective and/or anti-inflammatory agents. The polymer further comprises pharmaceutical compositions that have a delayed/sustained release from the polymer. Shikani et al. do not disclose an elemental silver layer in combination with an absorbable material. More importantly, the vapor-deposition method and the thickness of the silver layer are not shown.

Accordingly, the combination of Trogolo et al., Bates et al., and Shikani et al., do not render the instantly claimed subject matter obvious.

CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be patentably distinguishable over the prior art of record. The Examiner is respectfully requested to reconsider and withdraw the outstanding rejections and allow all pending claims. Favorable action with allowance of the claims pending in this application is earnestly solicited.

The Examiner is invited to contact the undersigned attorney if it is believed such contact will expedite the prosecution of the application. Also, if the Examiner has any questions or comments regarding this matter, she is welcomed to contact the undersigned attorney at the below-listed number and address.


Respectfully submitted,

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